IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4764 OF 1998

Smt.Padmavati Shantilal Shah
and another Petitioners

versus

Chief Officer, Itchalkaranji
Municipal Council, Itchalkaranji
and others Respondents

Mr.R.S.Apte, adv. for petitioners.
Mr.C.R.Sonawane, AGP for respondent no.3.

Mr.Tejpal S. Ingale, adv. for respondents 1 & 2

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 27th October 2004

PC :

Heard advocates.

2. By this petition the petitioners are seeking appropriate writ, order or direction directing respondents to remove all structures and roads standing or laying or passing through Final Plot No.113 which is in contravention of Town Planning Scheme No.2 of Itchalkaranji Municipal Council and to hand over vacant and peaceful possession of 21 Ares of land from the said Final Plot No.113 to the petitioners. The Town Planning Scheme was introduced by Municipal Council,

Itchalkaranji in the year 1956. The Draft Planning Scheme was sanctioned in the year 1960 and the Final Town Planning Scheme was sanctioned on 12th January 1973. The original revisional survey no.613 (original plot No.72) admeasuring 32 Acres and 37 Gunthas was merged into three Final Plots as under :-

| Final Plot No. | Areas in sq.yards. | |
|---|---|---|
| 111 | 0.30.24 | 3654 |
| 112 | 7A 7.23G | 34750 |
| 113 | 18A 76.77G | 90332 |

3. The Original Plot and the Final Plots were jointly owned by Dharma Tatoba Alase and Bhupal Baburao Chougule. It appears that in Final Plot No.113, there existed an old public road which is known as "Shahapur Road" and there is a water pipe-line and underground drainage pipe-line passing through this property. Having regard to these conditions, the original owners had earmarked Final Plot No.113 for the vegetable market for the plot holders. The lay out plan prepared by the original owners incorporating reservation for vegetable market was sanctioned in 1961.

4. The case of petitioners is that they have purchased an area of 21 Ares out of Final Plot No.113. Apart from the fact that there is serious dispute about identification of the property purchased by the petitioners, the recitals in the sale deed clearly show that at the time of sale, the original owners were in possession of Final Plot No.113. In fact, the original owners have got sanctioned lay out plan for the entire Final Plot No.113 long back in the year 1964 and developed the plot as per the lay out plan. The sale deed also shows that physical possession of the area of 21 Ares was handed over to the petitioners at the time of execution of the sale deed. This sale deed was executed on 30th December 1991 i.e. nearly 18 years after sanctioning of the Town Planning Scheme. When the physical possession was handed over to the petitioner at the time of execution of sale, it is difficult to appreciate as to how the petitioners could seek a direction against Municipal Council to place the petitioners in possession of land of 21 Ares purchased by them from the original owners. There is no provision in the Maharashtra Regional & Town Planning Act, 1966 for handing over part possession or part of the property. Under these circumstances, the prayer for directing the Municipal Council to

place the petitioners in possession cannot be accepted.

5. In the above circumstances, we find no reason to exercise our jurisdiction under Article 226 of Constitution of India. Petition is accordingly disposed of. However, it is made clear that this order shall not preclude the petitioners from developing the property in accordance with law.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2497 OF 2004
IN
WRIT PETITION NO.4764 OF 1998

Chief Officer, Ichalkaranji
Municipal Council, Ichalkaranji
and another ... Applicants

versus

Smt.Padmavati Shantilal Shah
and others ... Respondents

Mr.Tejpal S. Ingale, adv. for applicants.
Mr.R.S.Apte, adv. for respondents 1 and 2.
C.R.Sonawane, adv. for R-3.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 27th October 2004

PC :

1. In view of disposal of Writ Petition No.4764 of 1998 itself, present Civil Application does not survive. It is disposed of as such.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)